

Materials for Juvenile & Domestic Relations Breakout Session

9:00 a.m. - 10:30 a.m.

“Child Support: I Have to Pay How Much?!?!”

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prepared by

Robert W. Partin, Esquire of McCandlish Holton, P.C.

Report of Child Support Guidelines Review Panel
(analysis of Virginia’s guidelines during the 2009-2013 quadrennium)

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I Have To Pay HOW Much !?!!

A Look At The 2014 Changes to Virginia's Child Support Guidelines

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I. History of Virginia's Child Support Guidelines

In August 1984 Congress passed 42 U.S.C. § 667, which required each state to “establish guidelines for child support award amounts within the State,” whether by law or by judicial or administrative action. That statute also requires the states to review the guidelines “at least once every 4 years to ensure that their application results in the determination of appropriate child support award amounts.” 42 U.S.C. § 667(a). Congress also included the requirement that the child support amount resulting from application of the guidelines must be presumptively correct and that rebutting the presumption requires, “a written finding or specific finding on the record that the application of the guidelines would be unjust or inappropriate in a particular case, as determined under criteria established by the State.” 42 U.S.C. § 667(b)(2). The effective date of the statute was October 1, 1987.

Virginia enacted its child support guidelines, Virginia Code § 20-108.2, in 1988. Virginia adopted the Income Shares Model which is based on the premise that children should receive the same level of expenditures they would enjoy if their parents lived together and combined their finances, and that the parents should share the financial support of their children in proportion to their incomes.

As of January 1, 2014, Virginia was one of only eight states that had not modified its child support guidelines. Thus, while some changes were made to the statute, six four-year periods passed without the Virginia General Assembly making any modifications to the tables from which the presumptive amount of child support is derived. The genesis of the 2014

modifications to the child support guidelines was the Virginia Child Support Guidelines Review Panel's December 2013 Report To The Governor and General Assembly of Virginia ("The Report"). The Report is included as Appendix A.

II. The 2014 Changes

a. Virginia Child Support Guidelines Review Panel

The Virginia Child Support Guidelines Review Panel that produced the December 2013 Report was chaired by The Honorable A. Ellen White of the Campbell County Juvenile and Domestic Relations District Court and consisted of members of the Virginia Senate and House, a Circuit Court Judge, The Honorable Wilford Taylor, Jr., members of the bar, noncustodial parents, custodial parents, a child advocate and Craig M. Burshem as the representative from the Department of Social Services.

The Panel met nine times between September 2010 and September 2013 and held two public hearings. The Panel eventually focused on two primary issues – adoption of a new guideline schedule and addressing the provision for \$250 per child per year in uninsured medical expenses.

The recommendations of the Panel resulted in HB 933, which the House passed on January 24, 2014 by a vote of 85 yes votes to 10 no votes. On February 26, 2014, HB 933 was passed by the Senate with 38 voting yes versus zero no votes. On April 6, 2014, HB 933 was approved by Governor McAuliffe. HB 933 is included as Appendix B.

b. Modifications to the Child Support Tables

The modifications to the child support table in Virginia Code § 20-108.2 include the following:

- i. The child support schedule provided in the statute goes up to a combined monthly income of \$35,000, and provides for a single formula/percentage to be applied for combined monthly incomes over \$35,000. The prior tables went up to a combined monthly income of \$10,000, then provided formulas for three tiers for combined incomes over \$10,000 per month -- \$10,000 to \$20,000 per month; \$20,000 to \$50,000 per month; and over \$50,000 combined income per month.
- ii. The statutory minimum obligation is increased. The prior table provided that for parents with combined incomes of \$0 to \$599 per month, the statutory minimum obligation was \$65. The 2014 table provides for statutory minimums for combined incomes of \$0 to \$350 per month that increase from \$68 per month for one child to \$169 per month for six children. At a combined income of \$550 per month, which previously would have resulted in the statutory minimum obligation of \$65, the obligation now ranges from \$107 per month for one child to \$263 for six children.
- iii. The presumptive amounts for the total child support obligation (for both parents, prior to being divided *pro rata*) increases for those parents with combined incomes less than \$650 per month – primarily as a result of the increased statutory minimum – as well as for parents with combined monthly incomes up to \$5,000, on average. For parents with combined monthly incomes between \$5,050 and \$10,000, the new schedule results in an increased support obligation for one or two children and a decreased

obligation for three to six children, on average. For those parents with combined monthly incomes over \$10,000, the new tables provide for an average increase ranging from 21.3% for one child to 2.3% for five children. Significantly, the revised tables result in increases at all income levels for parents with one or two children in common.

c. Other Amendments to Virginia Code § 20-108.2

i. Virginia Code § 20-108.2(B)

In addition to the new tables, the narrative language regarding the statutory minimum in Virginia Code § 20-108.2(B) was modified as follows:

However, unless one of the following exemptions applies where the sole custody child support obligation as computed pursuant to subdivision G 1 is less than \$65 the statutory minimum per month, there shall be a presumptive minimum child support obligation of \$65 the statutory minimum per month payable by the payor parent. If the gross income of the obligor is equal to or less than 150 percent of the federal poverty level promulgated by the U. S. Department of Health and Human Services from time to time, then the court, upon hearing evidence that there is no ability to pay the presumptive statutory minimum, may set an obligation below the presumptive statutory minimum provided doing so does not create or reduce a support obligation to an amount which seriously impairs the custodial parent's ability to maintain minimum adequate housing and provide other basic necessities for the child.

The 2014 HHS Poverty Guidelines is attached as Appendix C. For one-person households in Virginia, the poverty guideline is \$11,670 per year. One hundred fifty percent of that amount is \$17,505 or \$1,458.75 per month.

Query Number One: Does the above language permit a court to deviate from presumptive amount of child support in cases where the guidelines result in more than the statutory minimum child support when the payor parent's income is less than \$1,458.75 per month?

Query Number Two: Since the HHS Poverty Guidelines are based on the number of persons in a household, is the court required to or should the court consider the number of persons in the payor parent's household? If so, should the court also consider the incomes of other persons in the household, even though those persons do not owe a duty of support to the subject child(ren)?

ii. Virginia Code § 20-108.2(D)

The 2014 amendment to Virginia Code § 20-108.2 also removed the provision in Subsection D that the parties share in proportion to their gross incomes, as used for calculating the monthly support obligation, any reasonable and necessary unreimbursed medical or dental expenses in excess of \$250 for any calendar year for each child who is the subject of the obligation. This modification results in an effective increase in child support for each payor parent, although the actual amount can only be determined on a case by case basis.

III. Material Change In Circumstances?

Does passage of the 2014 amendment to Virginia Code § 20-108.2 in and of itself establish a material change in circumstances warranting the filing and consideration of a motion to modify an existing child support obligation? Cases that considered modification proceedings after the initial adoption of Virginia Code § 20-108.2 are instructive. In Milligan v. Milligan, 12 Va. App. 982 (1991), the Court of Appeals said,

We do not agree that the material or substantial change of circumstance rule established prior to the enactment of Code § 20-108.2 is required as a condition precedent to a child or party obtaining the benefits of that Code section where either can show a significant variance between the guidelines and the court's prior decree. In such situations, the Code itself supplies the reasons to review the previous award and apply the guidelines.

Id. at 988. The court explained later, that “adoption of the support guidelines and a support award that pre-dated the guidelines, and which varied significantly from the presumptively correct amount, provided a reason equivalent to a material change in circumstance that justified a modification hearing.” Hiner v. Hadeed, 15 Va. App. 575 (1993). Thus, adoption of the 2014 guideline tables is sufficient for consideration of a motion to amend a child support award entered before July 1, 2014 **IF** the presumptive amount of monthly child support from the new guidelines varies significantly from the prior award.